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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

March 17, 2004

In re application of : LARRY R. KONDAS
ROBERT N. SANFORD

Serial No. : 10/661,421

Filed : SEPTEMBER 12, 2003

For : IN GROUND HOSE WELL

Examiner : N/A

Art Unit : 3753

Our File No. : 7563-03110

PETITION TO ACCEPT UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY
UNDER 35 U.S.C. § 120 PURSUANT TO 37 C.F.R. § 1.78(a)(3)

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, Va 22313-1450

Dear Sir:

Pursuant to 37 C.F.R. § 1.78(a)(3), Applicants, through their undersigned counsel, hereby petition the Commissioner to accept Applicants' unintentionally delayed claim for priority under 35 U.S.C. § 120. Applicants include herewith a Second Preliminary Amendment amending the application to include the claim for priority. Since this claim for priority is being made more than four months after the filing date of the instant application and more than sixteen months after the filing date of the priority application, Applicants

enclose herewith a check in the amount of \$1,330.00 for the surcharge under 37 C.F.R. § 1.17(t). The entire delay between the date the claim for priority was due under 37 C.F.R. 1.78(a)(2)(ii) and the date the claim is being filed was unintentional.

In the utility application transmittal accompanying Applicants' originally filed application, a copy of which is attached hereto, Applicants clearly indicated that they were filing a continuation application of an application being examined by Examiner A. Michael Chambers in Technical Art Unit 3753, but inadvertently omitted the application number. The application upon which priority was intended to be claimed was Application Serial No. 10/113,589, now U.S. Patent No. 6,634,374. As is clear from an examination of the file history of Application Serial No. 10/113,589, Examiner A. Michael Chambers in Technical Art Unit 3753 was the Examiner in charge of examining Application Serial No. 10/113,589. The instant application was filed on September 12, 2003 during the pendency of Application Serial No. 10/113,589 and names as inventors the same inventors as are named on Application Serial No. 10/113,589. As a result, Applicants were entitled to claim priority to Application Serial No. 10/113,589 when they filed the instant application.

The filing receipt for the instant application was mailed on January 12, 2004 and was not received by the office of Applicants' undersigned counsel until January 15, 2004. Thus, the filing receipt of the instant application was not even received by Applicants' counsel until more than four months after the filing date of the instant application and more than sixteen months after the filing date of the priority application (i.e., Application Serial No. 10/113,589). Neither Applicants nor Applicants' counsel became aware of the failure to claim priority under 35 U.S.C. § 120 until a recent review of the file was conducted.

Applicants are filing this petition promptly upon discovering their unintentional failure to claim priority under 35 U.S.C. § 120 upon Application Serial No. 10/113,589.

In view of the foregoing and the attached enclosures, Applicants respectfully request that their petition be granted and that the instant application be granted a claim of priority under 35 U.S.C. § 120 upon Application Serial No. 10/113,589.

Please charge any necessary fees associated herewith, including extension of time fees (if applicable and not paid by separate check), to the undersigned's Deposit Account No. 50-1111.

Respectfully submitted,


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UTILITY PATENT APPLICATION TRANSMITTAL

(Only for new nonprovisional applications under 37 CFR 1.53(b))

APPLICATION ELEMENTS

See MPEP chapter 600 concerning utility patent application contents.

- Fee Transmittal Form (e.g., PTO/SB/17)
(Submit an original and a duplicate for fee processing)
- Applicant claims small entity status.
See 37 CFR 1.27.
- Specification [Total Pages 12]
(preferred arrangement set forth below)
 - Descriptive title of the invention
 - Cross Reference to Related Applications
 - Statement Regarding Fed sponsored R & D
 - Reference to sequence listing, a table, or a computer program listing appendix
 - Background of the Invention
 - Brief Summary of the Invention
 - Brief Description of the Drawings (if filed)
 - Detailed Description
 - Claim(s)
 - Abstract of the Disclosure
- Drawing(s) (35 U.S.C. 113) [Total Sheets: 7]
5. Oath or Declaration [Total Sheets: 3]
 - a. Newly executed (original or copy)
 - b. Copy from a prior application (37 CFR 1.63(d))
(for continuation/divisional with Box 18 completed)
 - i. **DELETION OF INVENTOR(S)**
Signed statement attached deleting Inventor(s) name in the prior application, see 37 CFR 1.63(d)(2) and 1.33(b).
- Application Data Sheet. See 37 CFR 1.76

Attorney Docket No.	7563-03110
First Inventor	LARRY R. KONDAS
Title	IN GROUND HOSE WELL
Express Mail Label No.	EL 483 999 827 US

ADDRESS TO:	Mail Stop Patent Application Commissioner for Patents P.O. Box 1450 Alexandria VA 22313-1450
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7. CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix)
8. Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary)
 - a. Computer Readable Form (CRF)
 - b. Specification Sequence Listing on:
 - i. CD-ROM or CD-R (2 copies); or
 - ii. Paper
 - c. Statements verifying identity of above copies

ACCOMPANYING APPLICATION PARTS

9. Assignment Papers (cover sheet & document(s))
10. 37 CFR 3.73(b) Statement Power of Attorney (when there is an assignee)
11. English Translation Document (if applicable)
12. Information Disclosure Statement (IDS)/PTO-1449 Copies of IDS Citations
13. Preliminary Amendment
14. Return Receipt Postcard (MPEP 503) (Should be specifically itemized)
15. Certified Copy of Priority Document(s) (if foreign priority is claimed)
16. Nonpublication Request under 35 U.S.C. 122 (b)(2)(B)(i). Applicant must attach form PTO/SB/35 or its equivalent.
17. Other:

18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in the first sentence of the specification following the title, or in an Application Data Sheet under 37 CFR 1.76:

Continuation Divisional Continuation-in-part (CIP) of prior application No.:

Prior application Information: Examiner CHAMBERS, A MICHAEL Art Unit: 3753
For CONTINUATION OF DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

19. CORRESPONDENCE ADDRESS

<input type="checkbox"/> Customer Number:	OR <input checked="" type="checkbox"/> Correspondence address below		
Name	DANIEL C. CRILLY, ESQ.		
Address	BRINKLEY, MCNERNEY, MORGAN, SOLOMON & TATUM LLP 200 E. LAS OLAS, BLVD., SUITE 1900		
City	FORT LAUDERDALE	State	FL
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Name (Print/Type)	DANIEL C. CRILLY, ESQ.	Registration No. (Attorney/Agent)	38417
Signature	<u>DANIEL C. CRILLY</u>		

This collection of information is required by 37 CFR 1.53(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Patent Application, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



In re application serial no.:10/661,421

File No.: 7563-03110

CERTIFICATE OF MAILING

I HEREBY CERTIFY that the following correspondence: PETITION TO ACCEPT UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY UNDER 35 U.S.C. § 120 PURSUANT TO 37 C.F.R. § 178(a)(3) (4 pages); COPY OF UTILITY PATENT APPLICATION TRANSMITTAL; TWO (2) CHECKS TOTALING \$1,330.00 TO COVER GOVERNMENTAL FILING FEE; SECOND PRELIMINARY AMENDMENT UNDER 37 C.F.R. § 1.115 (3 pages); and RETURN POSTCARD FOR CONFIRMATION OF RECEIPT is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: **Mail Stop PETITION, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450**, this the 18TH day of MARCH 2004.

Chriselide Mendez, Legal Assistant

Date